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MONTANA LEGISLATIVE HISTORY

Chapter 348 1989

Bill H _____ S 367 Original bill & history ___C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Mar 13	✓ C	Hearing Date(s) Feb 13	✓ C
_____	___C	Feb 15	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 13	✓ C	Feb 16	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/07	3RD READING CONCURRED	89	7
	RETURNED TO SENATE		
3/14	SIGNED BY PRESIDENT		
3/14	SIGNED BY SPEAKER		
3/15	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 164 EFFECTIVE DATE: 10/01/89		

SB 367 INTRODUCED BY NOBLE, ET AL.
PROVIDE PROCEDURE FOR DESTRUCTION, SALE, OR USE BY LAW ENFORCEMENT OFFICIALS OF UNCLAIMED EVIDENCE IN CRIMINAL CASES

2/07	INTRODUCED		
2/07	REFERRED TO JUDICIARY		
2/13	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	50	0
2/21	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/22	REFERRED TO JUDICIARY		
3/13	HEARING		
3/13	COMMITTEE REPORT--BILL CONCURRED		
3/15	2ND READING CONCURRED	38	2
3/16	3RD READING CONCURRED	96	0
	RETURNED TO SENATE		
3/22	SIGNED BY PRESIDENT		
3/22	SIGNED BY SPEAKER		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 348 EFFECTIVE DATE: 10/01/89		

SB 368 INTRODUCED BY KEATING, ET AL.
EXTEND THE EXEMPTION OF CERTAIN STRIPPER WELLS FROM SEVERANCE TAXES

2/07	INTRODUCED		
2/07	REFERRED TO TAXATION		
2/08	FISCAL NOTE REQUESTED		
2/14	HEARING		
2/14	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/15	COMMITTEE REPORT--BILL PASSED		
2/17	2ND READING PASSED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO TAXATION		
3/28	HEARING		
4/11	COMMITTEE REPORT--BILL CONCURRED		
4/12	2ND READING CONCURRED	87	11
4/13	3RD READING CONCURRED	91	8
	RETURNED TO SENATE		
4/17	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 13, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail.

Members Excused: Loren Jenkins

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 367

Presentation and Opening Statement by Sponsor: Senator Jerry Noble of Great Falls, District 21, opened the hearing saying the bill was requested by the Montana County Attorneys Association because there was no statutory direction for law enforcement officers or prosecutors in certain cases. A law was needed specifying how the items of property seized as evidence were to be handled after the case is closed, or after the decision has been made not to file charges. Different jurisdictions have different means of disposing of unnecessary evidence, he told the committee. Questions continually arise about how to disburse of such evidence. This bill will provide uniform statewide procedure that will allow for judicial review on the disposition of this property. It also allows law enforcement with an opportunity to obtain a court order specifying when the property may be used for training or enforcement purposes.

List of Testifying Proponents and What Group they Represent:

John Connor, Department of Justice, County Prosecutors Bureau, appearing in behalf of the Montana County Attorneys Association.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor said this bill would not make anyone "angry." It simply provides a procedure for destruction of evidence after a case has been completed and no charges are contemplated. The process now is not specified and the property sometimes remains in storage for years on end, he said. If a request to destroy the property is made, a judge often asks for the law that provides for that authority. This bill will bring uniformity to the process and eliminate any appearance of impropriety when evidence has to be destroyed by contraband. For instance, if law enforcement wants to burn 50 lb. of marijuana, there will be a court order specifying how that will be done and could include witnesses to see that it was done properly. The bill allows also allows for disposition of property for which the owner cannot be determined. The property can be sold and the money placed in an appropriate drug fund whether in a county, city or state.

Questions From Committee Members: Senator Bishop asked how the bill would tie in with the unclaimed property law for abandoned property. John Connors said that Section 4 specified that those properties do not apply to actions included in this act. Things that will be included might be a sawed-off shotgun which would be illegal to possess and should be destroyed, he said.

Senator Halligan said that sometimes a landlord has a stove or something else removed, then taken in evidence by law enforcement. Where would a person go to retrieve it. Mr. Connors said this bill would not have an application in that case. This bill applies where the owner cannot be determined, he said.

Senator Crippen asked if there were provisions for money or personal property. Mr. Connors said the authority was provided, but only for drug-related matters--forfeitures arising out of Title 44, chapter 12.

Senator Crippen asked if there should be a definition of the property and Mr. Connors said he would look into it.

Closing by Sponsor: Senator Noble closed the hearing.

HEARING ON SENATE BILL 377

Presentation and Opening Statement by Sponsor: Senator Del Gage of Cut Bank, District 5, opened the hearing saying the bill revised and clarified the items subject to forfeiture connected to drug dealing, and also removed the 250 gram marijuana exemption exception that was in the law previously. It brings the state, as far as forfeiture is concerned, into a zero tolerance situation as the federal government has done. He said John Connor would explain the bill.

List of Testifying Proponents and What Group they Represent:

John Connor, Montana County Attorneys' Association
Ed Hall, Staff Attorney for Crime Control
Chuck O'Reilly, Montana Peace Officers Association

List of Testifying Opponents and What Group They Represent:

Robert Scott, A.C.L.U.

Testimony:

John Conners appeared in favor of the bill. He said the bill was one of three drug-related bills of importance to the Montana County Attorneys' Association. This bill will provide the most useful tool in the efforts against dangerous drugs. He said there are four reasons for requesting this legislation. Under the anti-drug abuse act of 1988, there is an amendment proposed to Section 21. Its effect is that, when the federal government seizes property that the state is involved with also under the adoptive seizures provision, the state no longer gets any share of that property after forfeiture occurs, if the state statute is not as broad as the federal law. For example, he said the federal law provides for seizure of real property if it's used in any way to violate a federal drug law. Montana statute now only provides for seizure of real property if its proceeds are obtained directly or indirectly from a violation or sale of an

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-13-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS			✓
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

line 19, that any reference to the National Guard be stricken. She said there is a problem in having a statutory appropriation in the bill, because it is a senate bill and you cannot have an appropriation in a senate bill. So, it was illegally introduced. Rather than having it reintroduced in the House, the approach was to take out the statutory appropriation language. The amendment did that,but does not address the problem on page 4, line 5, that 1/2% rate is 10 million dollars. She said she had the figure in that could be put in, but no one requested it be drafted that way.

O'Reilly stated that this was originally assigned as two bills. The funding was totally separate from the one regarding giving assistance. He thought that this bill would be killed in its entirety if the funding aspect is left in. He said he preferred amending the bill and keeping it alive.

Amendments and Votes: Senator Halligan MOVED the amendments. No action was taken.

After further discussion, Senator Mazurek MOVED that the committee adopt the amendments #1, 2, and 7 which is the effective date and title. He also moved that Section 6, 7, 8, and 9 be deleted. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that SB 353 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 367

Discussion: Senator Beck MOVED that SB 367 Do Pass. He WITHDREW his motion so that the bill could be amended.

Amendments and Votes: Senator Crippen MOVED the amendment which had previously been suggested. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Beck moved that SB 367 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-15-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS			✓
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 367 (first reading copy -- white), respectfully report that SB 367 be amended and as so amended do pass:

1. Page 2, line 4.
Following: "contraband"
Insert: ", which for the purposes of [sections 1 through 4] means any property that is unlawful to produce or possess"

AND AS AMENDED DO PASS

Signed: Al Bisha
Bruce D. Crippen, Chairman

S.C. 2/16/89 2:45 p.m.

SCCR367.216

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 13, 1989, at 9:04 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Tom Hannah

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

HEARING ON SENATE BILL 367

Presentation and Opening Statement by Sponsor: Sen. Jerry Noble, Senate District 21, stated SB 367 provides for the creation of a uniform method of disposal of criminal case evidence. The bill was requested by the Montana County Attorneys Association because there is no statutory direction for law enforcement officers or prosecutors specifying how those items of property seized as evidence should be handled after the case is closed or after a decision is made not to file charges. Consequently, different jurisdictions have different means of disposing of unnecessary evidence. Questions continually arise from law enforcement officers and prosecutors as to how to deal with such evidence. This bill will provide a uniform state procedure that will allow for a judicial review on disposition or destruction of evidence. It also provides law enforcement with an opportunity to obtain a court order specifying that certain contraband be used for training or enforcement purposes.

List of Testifying Proponents and What Group they Represent:

Peter Funk, Asst. Attorney General, Dept. of Justice

Proponent Testimony:

Peter Funk, Assistant Attorney General, Department of Justice, appearing on behalf of the Montana County Attorneys Association, stated current law does not provide much of a procedure particularly for destruction of evidence. The

Department of Justice and County Attorneys Association see three benefits in the bill: Within local jurisdictions, each jurisdiction will have a consistent and well-recognized manner to dispose of property of this type, there will be a structured method of disposition not only that the courts and county attorneys will recognize but also that local law enforcement agencies will be aware of, and it provides explicitly for the destruction or use of contraband. The Senate inserted a formal definition of contraband. The bill allows appropriation by law enforcement agencies of contraband material but only if that use is authorized by the court. Essentially any use or destruction must be authorized by the court. If there is unclaimed money or noncontraband property, the bill provides a procedure whereby those moneys can be ordered deposited to the local county drug fund. The bill provides explicit time limitations for action on both the petition and for the court to issue the order disposing of the property. What triggers the process is the case either has to be completed or the prosecution foregone and a decision made that a prosecution not be entered into. The bill does not affect property that is claimed by people--there is a separate statute that deals with the situation where there is ownership. The bill deals only with those situations where there is no ownership of property.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee Members:

Rep. Eudaily asked Mr. Funk to clarify where the bill indicated no ownership of property is necessary. Mr. Funk explained it is not explicit in this bill that claimed property is not under this procedure, but the immediately preceding section, Section 46-5-304, MCA, deals with the process by which a claimant of evidence petitions the court for return of that evidence. However, in this bill where the petition process is described, it states whatever information you have regarding a potential owner has to be identified to the court at the time you file a petition. That information, coupled with the immediately preceding statute, makes clear that if the property is claimed by an individual, this process is not used, although it may be with contraband. If

things are unlawful to be possessed, in that case, a claim of ownership probably will not make any difference. Rep. Eudaily asked Mr. Funk if he thought it would be necessary to reference this bill to the other section. Mr. Funk thought that would be a good idea.

Closing by Sponsor: Sen. Noble closed.

DISPOSITION OF SENATE BILL 367

Motion: Rep. Brooke moved SB 367 BE CONCURRED IN, motion seconded by Rep. Aafedt.

Discussion: Rep. Eudaily indicated his only question was the first one, which is simply the purpose of the bill which doesn't indicate the ownership has been established. It just says if the legal proceedings are completed or they do not initiate them, they can take your property. That bothered him because it really wasn't talking about contraband in that section. Rep. Mercer responded that in addition to what Mr. Funk said that there is an indication in the bill the law enforcement agency will try to find out who the owner is, Section 46-5-305, MCA, which is in the bill, says if the property seized into evidence is not claimed by the owner within six months of completion of the case, there is a codification instruction in the bill that is going to put these new sections in Title 46, chapter 5, part 3. In that part, there is presently a provision that begins, any person claiming the right to possession of property seized as evidence may apply to the judge to whom it has been delivered for its return. Then there's a procedure which the judge uses to get the property back to him. These new sections will mesh right in with that procedure.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion SB 367 BE CONCURRED IN CARRIED unanimously.

HEARING ON SENATE BILL 113

Presentation and Opening Statement by Sponsor: Sen. Larry Tveit, Senate District 11, stated SB 113 was requested by the Department of Family Services to impose a penalty for aiding a youth committed to either Pine Hills or Mountain View School in not returning. The Department wishes to impose the same sentence on a person who assists a resident in not returning as is imposed on persons helping a resident to

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 13, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

STANDING COMMITTEE REPORT

March 13, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 367 (third reading copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. AAFEDT WILL CARRY THIS BILL ON THE HOUSE FLOOR]

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 367 DATE MARCH 13, 1989

SPONSOR SEN. NOBLE

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Peter Funk	Dept. of Justice	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.